

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 02-18-71593
HUD# 07-18-8485-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

JERRY'S HOMES, INC.
10430 New York, Suite C
Urbandale, Iowa 50322-3773

MELEE, L.L.C.
1312 Locust Street, Suite 100z
Des Moines, Iowa 50309-2920

COMPLAINANT

ANGELA JACKSON, COMMISSIONER
Iowa Civil Rights Commission
400 East 14th Street, Room 201
Des Moines, Iowa 50319-0201

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street, Room 201
Des Moines, Iowa 50319-0201

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents designed and constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "accessible and usable public and common use areas," the "accessible route into and through the covered unit," and the "light switches, electrical outlets, thermostats, and other environmental controls in accessible locations."¹ Complainant specifically alleged, at Unit 16 in Building 2, 2314 East Porter Avenue, Carman Estates ("Carman"), one feature in the common areas and two features within one of the covered units appeared inaccessible to a person utilizing a wheelchair for mobility – (1) the height of the midlines of the

¹ See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible and Usable Public and Common Use Areas]; 216.8A(3)(c)(3)(c)(i) [Requirement 4 – Accessible Route into and Through the Covered Unit]; and 216.8A(3)(c)(3)(c)(ii) [Requirement 5 – Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations].

keyholes of the top two rows of the mail compartments at Mailbox Kiosk #2 were measured at 58” and 54 ½”, so both of the top two rows of mailboxes are higher than the 54”-maximum allowed for a parallel approach by persons using a wheelchair; (2) the height of the interior threshold at the doorway to the balcony in Unit 16 was measured at 1 ¼”, which exceeds the ¼”-maximum allowed for interior thresholds at sliding glass doorway without 1:2 beveling, which was observed to be lacking; and (3) the heights of the thermostat top controls were measured at 51 ¼” in Unit 16, which is more than the allowed maximum height of 48”.

Description of the Subject Property

Subject Property

Carman consists of four buildings – Buildings 2, 3, 4, and 5 – located at 2314 East Porter Avenue. The ground-floor dwelling units and common use/public areas will all be required to meet the same accessibility requirements of the ICRA and FHA. All four buildings at Carman were issued Certificates of Occupancy signed by Corey Christiansen, Building Official for the City of Des Moines, Iowa, on June 12, 2017.

The scope of the current agreement includes all of the ground-floor dwelling units and the public and common use areas, including the leasing office, parking lot spaces, garages, dumpsters, and the mailbox kiosks adjacent to the south of Building 4.

Each building has only two types of units – 2BR/2BA (“Ashton”) and 3BR/2BA units (“Brewster”). There are four ground-level units of each type at each building.² So, there are 16 Ashton and 16 Brewster units at Carman. Three units were inspected by ICRC Investigators – two Ashton units (Unit 16 in Building 2 and Unit 64 in Building 5) and one Brewster Unit (Unit 28 in Building 4).

Respondents’ Defenses

When asked in the questionnaire what was true or false about the allegations, Respondent Jerry’s Homes answered:

All is true.

Respondent Studio Melee answered:

We believe that the design drawings prepared by Studio Melee meet FHA and ANSI requirements and that the items in the complaint are contractor corrections.

Report of Preliminary Findings:

ICRC Investigators inspected three covered units at Carman, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of the units listed in the “Subject Property” section above, and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

² See Appendix B for matrix indicating the configuration of units by floor-plan type, and floor.

1) At both of the parking spaces reserved for persons with disabilities that are adjacent to the leasing office, the height to the bottom edge of the signage was measured at less than the minimum height of 60 inches allowed by ADAAG – 54 ½” at the “Van-Accessible” signage and 58 ½” at the other signage indicating the space is reserved for use by persons with a disability.³ The height of the signage at both parking spaces was installed too low – making the spaces more challenging to locate.

No instruction or diagram for the installation height of the signage for designating parking spaces as reserved for use by persons with disabilities was found in the plans submitted by Respondents.

2) The mailboxes for all units at Carman are housed within six mailbox kiosks, which are located between Buildings 2 and 4.⁴ None of the buildings at Carman have an elevator. Therefore, only the mailboxes for ground-floor units must meet reachability requirements.

There is sufficient clearance in front of all mailbox kiosks to allow for a parallel approach by persons using a mobility-assistive device such as a wheelchair. The heights to the midline of the keyholes at the top two rows of mailboxes were measured 54 ¼” and 57 ¾”, which exceed the 54”-maximum allowed for a parallel approach by ANSI 1986.⁵

The mailboxes for ground-floor tenants that have midlines at the keyholes with heights exceeding the 54”-maximum height are unreachable because they are out of compliance with the FHA and ICRA.

The plans submitted by Respondents did not include instructions for the installation heights of mailbox kiosks.

3) Each of the dwelling-unit buildings has an animal waste station installed nearby in a grassy area adjacent to each building. The animal waste stations adjacent to three of the dwelling-unit buildings were measured at more than the 24”-maximum reach from the closest sidewalk – 36” from the closest sidewalks near Buildings 2 and 5, and 80” from the closest sidewalk adjacent to Building 4.⁶ The surface along the path to the animal waste station consists of grassy areas that are not “stable, firm, and slip resistant,” as required by Section 4.5.1 of ANSI 1986, quoted above. None of these three animal waste stations are on an accessible route as required by the ICRA and the FHA.

No specific instructions were found in the plans for the installation of the animal waste stations.

4) After being notified of the current complaint on February 12, 2018, and prior to ICRC’s full onsite inspection on April 20, 2018, Respondents stated they corrected the non-compliant threshold heights by inserting shims under the finish floor surface to correct the deficiency that was observed by ICRC Tester, and alleged in the current complaint. The interior finished floor surfaces adjacent to the sliding glass doorways in the units inspected by ICRC Investigators were verified to be flush with the top of the thresholds. No further action by Respondents is required by ICRC in regards to this deficiency.

5) After being notified of the current complaint on February 12, 2018, and prior to ICRC’s full onsite inspection on April 20, 2018, Respondents stated they completed retrofits to correct the non-compliant

³ See Appendix A, Photos 1A and 1B.

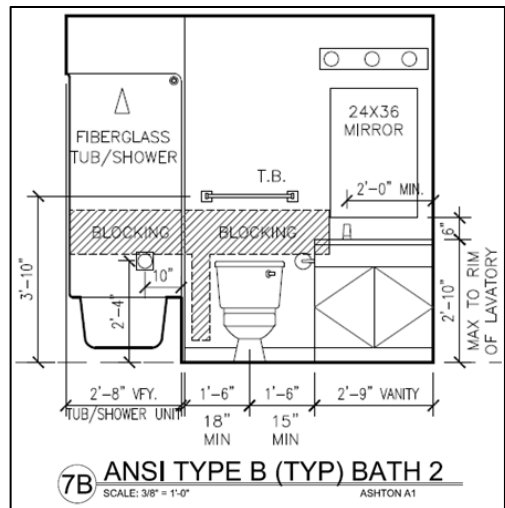
⁴ See Appendix A, Figure 3A for location of mailbox kiosks as captioned in the site plans.

⁵ See Appendix A, Photos 2C, 2D, and 2E.

⁶ See Appendix A Photo 3A.

heights of the thermostats' controls observed by ICRC Tester as alleged in the current complaint. The heights of all thermostats controls in the units inspected by ICRC Investigators were verified to be at heights of no more than 47 1/4". No further action by Respondents is required by ICRC in regards to this deficiency.

6) The plans submitted by Respondents included the following instructions and diagram for the installation of the towel bars in Ashton units:



The figure above indicates the towel bars were designed to be installed above the toilets at a height of 46" above the finished floor. The heights of the towel bars in both bathrooms in Unit 16 were measured at no less than 57 1/2", and were installed above toilets that have a depth of 27", which exceeds the 25"-maximum allowed depth for obstructions. Therefore, towel bars or hooks will need to be installed at a height of no more than 54" on a different wall that has no obstructions.

As designed and built, the towel bars in Unit 16 are too high, rendering them unusable by persons using wheelchairs.⁸

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

1) After being notified of the parking-signage height deficiency in the Report of Preliminary Findings on August 1, 2018, and prior to the drafting of the current settlement agreement, Respondent Jerry's Homes stated they corrected this deficiency and submitted photographs on August 23, 2018, in support of their claim. The photographs submitted by Jerry's Homes indicated that they reinstalled the signage for both parking spaces reserved for persons with disabilities adjacent to the leasing office – such that the height to the bottom edge of both signs is no less than the 60"-minimum required by the 2010 ADAAG.

2) After being notified of the mailbox-height deficiency in the Report of Preliminary Findings on August 1, 2018, and prior to the drafting of the current settlement agreement, Respondent Jerry's Homes

⁷ See Appendix B.

⁸ See Appendix A, Photo 5A.

stated they corrected this deficiency, and submitted emails and other documents – which showed the configuration of the mailbox compartments assigned to all units – from the United States Postal Services (USPS) on September 14 and 20, 2018, in support of their claim. The emails and documents from the USPS that were submitted by Jerry’s Homes indicated that the USPS reassigned the mailboxes – such that the height to the midline of the keyholes of the mailboxes assigned to the ground-floor units does not exceed the 54”-maximum height allowed by ANSI 1986 if there is sufficient clearance for a parallel approach by someone in a wheelchair.

3) After being notified of the deficiency about the accessible route to the animal waste station in the Report of Preliminary Findings on August 1, 2018, and prior to the drafting of the current settlement agreement, Respondent Jerry’s Homes stated they corrected this deficiency and submitted photographs on August 23, 2018, in support of their claim. The photographs submitted by Jerry’s Homes indicated that they reinstalled the animal waste stations closer to the adjacent sidewalk – such that the distance from the sidewalk edge to the animal waste station does not exceed the 24”-maximum reach allowed by ANSI 1986.

4) Respondents will install towel hooks at heights that do not exceed the 54”-maximum height allowed by ANSI 1986 – which is the maximum height allowed if there is sufficient clearance for a parallel approach by someone in a wheelchair – on a wall without obstructions in the bathroom of Unit 16 and of all other ground-floor units verified by Respondents to have towel bars exceeding the 54”-maximum height.

Assessment of Deficiencies:

Respondents stated all units were designed and built in accordance with the scoping requirements of the 2012 International Building Code [IBC 2012], which incorporates the standards of the 2009 American National Standards [ANSI 2009] for guidance on the technical requirements [i.e., the dimension requirements]. Neither the IBC 2012 nor the ANSI 2009 is one of the safe harbors accepted by HUD.⁹ Therefore, the Manual and the Guidelines, which incorporate ANSI 1986 for some of the technical requirements, must be used to assess and determine compliance with the ICRA and FHA, not IBC 2012 or ANSI 2009.

The public areas must meet the requirements of the ADA in addition to those of the FHA, as people other than residents or residents’ visitors will visit or frequent those areas. The common use areas, however, such as the dumpsters, parking lot, garages, and the mailbox kiosks adjacent to the south of Building 4 are governed by the FHA since they are only for use by the residents of Carman and their guests. The ADA will only be referenced in the current agreement for the public areas, which include the leasing office, parking spaces and sidewalks adjacent to the leasing office, and hallways.¹⁰ Finally, the requirements of the ADA will be presented as stated in the “2010 American with Disabilities Act Standards: 2004 ADAAG for Titles II and III Facilities” (ADAAG). *See* 42 U.S.C. 12204, Part 1191, Appendix A, and 42 U.S.C 12186(b); 28 CFR Part 36, Appendix B.

Following is the assessment of Respondents’ proposed retrofits and determination, based on the scoping and technical requirements of the 2010 ADAAG and the Manual:

⁹ <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on November 8, 2018).

¹⁰ The ADAAG defines “Public Use” as “[I]nterior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.” *See* “Definitions” on page 47 of ADAAG available online at http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf. Therefore, since the hallways and parking spaces are available for use by prospective residents, who are part of the general public, these areas are deemed to be “Public Use.”

- 1) ICRC agrees with Respondents' determination that they have corrected the parking-signage height deficiency because – as indicated in their photographs – they reinstalled the signage for both parking spaces reserved for persons with disabilities adjacent to the leasing office – such that the height to the bottom edge of both signs is no less than the 60"-minimum required by the 2010 ADAAG. No further action by Respondents is required by ICRC in regards to this deficiency.
- 2) ICRC agrees with Respondents' determination that they have corrected the mailbox-height deficiency because the mailbox compartments have been reassigned by the USPS – as based on their emails and documents that indicated the configuration of mailbox compartments assigned to all units – such that the height to the midline of the keyhole of the mailbox compartments assigned to ground-floor units does not exceed the 54"-maximum height allowed by ANSI 1986. No further action by Respondents is required by ICRC in regards to this deficiency.
- 3) ICRC agrees with Respondents' determination that they have corrected the deficiency about the accessible route to the animal waste station because Respondent Jerry's Homes reinstalled the animal waste stations closer to the adjacent sidewalk – as based on their photographs – such that the distance from the nearest sidewalk edge to the animal waste station does not exceed the 24"-maximum reach allowed by ANSI 1986. No further action by Respondents is required by ICRC in regards to this deficiency.
- 4) ICRC agrees with Respondents' proposal to install towel hooks at heights that do not exceed the 54"-maximum height allowed by ANSI 1986 – which is the maximum height allowed if there is sufficient clearance for a parallel approach by someone in a wheelchair – on a wall without obstructions in the bathroom of Unit 16 and of all other ground-floor units verified by Respondents to have towel bars exceeding the 54"-maximum height.

ICRC will also require this retrofit to be completed within 30 days of the date of the Closing Letter from ICRC.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

- 1) Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the "Iowa Civil Rights Act of 1965" (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
- 2) Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).

- 3) Respondents acknowledge the ICRA makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).
- 4) Respondents acknowledge the Fair Housing Act (FHA) makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).
- 5) Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider's operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
- 6) Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
- 7) Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in buildings with no elevator or all units in buildings with an elevator, and consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C). HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 C.F.R. Part 100.200 et seq.; 56 Fed. Reg. 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

Requirement 1 – Accessible building entrance on an accessible route.

Requirement 2 – Accessible and usable public and common areas.

Requirement 3 – Usable doors.

Requirement 4 – Accessible route into and through the covered dwelling unit.

Requirement 5 – Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Requirement 6 – Reinforced walls for grab bars.

Requirement 7 – Usable kitchens and bathrooms.

Voluntary and Full Settlement

8) The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

9) The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the

execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

10) The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

11) Respondents agree the ICRC may review compliance with this Agreement. And as part of such review, Respondents agree the ICRC may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the ICRC.

Disclosure

12) Because, pursuant to Iowa Code §216.15A(2)(d), the ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

13) Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

14) Respondents agree that:

(a) Gary Grubb and Jamie Malloy will receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws. The training will address the Fair Housing accessibility requirements that must be met in order to design and build covered dwellings and common use/public areas that are accessible and usable to individuals with mobility and visual impairments.

The training shall be conducted by a qualified person, approved by ICRC or the U.S. Department of Housing and Urban Development. Additionally, this term may be fulfilled by attending the "Build It Right Iowa Conference" on April 5, 2019 (<https://icrc.iowa.gov/news/6th-iowa-civil-rights-symposium-and-3rd-build-it-right-iowa-conference>), scheduling a training session with ICRC via email at BuilltRightIowa@iowa.gov, or by attending one of the training events offered by Fair Housing Accessibility First – information about which is available online at <http://www.fairhousingfirst.org/training/calendar.html>.

(b) Respondents will send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten days of completing the training.

15) Respondents agree all persons identified in 14) paragraph of the current section, and all Respondents' current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties will:

(a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

(b) Submit separate signed written statements via email from each of the Respondents' representatives named above in paragraph (a), and their current employees or agents who are involved in the design and/or construction of covered multifamily-dwelling properties indicating:

- i. They have reviewed and become familiar with the Fair Housing Act Design Manual.
- ii. They understand what the Seven Main "Design Requirements of the Guidelines" are by listing them in the written statement.

(c) Complete the requirements in (a) and (b) paragraphs of the current section within 120 days of the date of the Closing Letter from the ICRC.

Required Retrofits

17) Respondents agree to make the following retrofits to the subject property:

Usable Bathrooms – Towel Bars

(a) The parties agree bathroom towel bar in Unit 16 is unusable for persons using wheelchairs because they are installed at a height of 57 1/2" above toilets that have a depth of 27" – which exceeds (i) the 54-inch maximum height if there is sufficient clearance for persons who use a wheelchair to make a parallel approach; and (ii) the 24"-maximum reach depth over obstructions, as allowed by ANSI 1986.

(b) Respondents agree they will install a towel hook at a height of no greater than 54 inches on a different wall away from the toilet in the bathroom of Unit 16 – such that there is sufficient clearance for persons who use a wheelchair to make a parallel approach – as required by ANSI 1986.

(c) Respondents agree they will measure height of the towel bars in the bathrooms of all ground-floor units, and complete the retrofit required in (b) paragraph above at all units with towel bars exceeding the 54"-maximum height allowed in ANSI 1986.

(d) Respondents agree they will complete the retrofit described in the current subsection at all non-compliant units within 30 days from the date of the Closing Letter from ICRC.

Mandatory Reports

18) Respondents agree to notify ICRC when they have completed the required retrofits for each of the units. Such notification shall be made within 90 days of completion. These required notifications to ICRC

after each unit is modified or retrofitted will continue until all required retrofits have been completed in all 32 units.

19) Respondents agree, as the required retrofits are made to a particular unit ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection to Respondents. If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC.

20) Respondents agree to send all reports and written statements required in this agreement to ICRC (Attn: Emigdio Lopez-Sanders; Iowa Civil Rights Commission, 400 East 14th Street, Des Moines, Iowa 50319-0201, OR via email at emigdio.lopez-sanders@iowa.gov).

21) The sale or transfer of ownership, in whole or in part, by any owner of the subject property will not affect any obligation to modify or retrofit the properties as specified in this agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required retrofits as specified in this agreement.

Jerry's Homes, Inc.
RESPONDENT

Date

Melee, L.L.C.
RESPONDENT

Date

Angela Jackson, Commissioner
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date